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ABSTRACT

Overviews are presented of the legal requirements for special education and bilingual education in California. Specific legislation affecting each is reviewed. Special education legislation requires such actions as psychological and health assessments for selected students, full-scale reassessments every 3 years for students remaining in special education, and placement of the student in the least restrictive environment. Bilingual legislation includes provisions for diagnostic assessment, placement in inappropriate bilingual programs, and staffing of bilingual programs with trained and credentialed teachers. Similarities between special and bilingual education legislation are examined, including the concept of equal education opportunity on which they are based. Relationships between bilingual and special education practices in student identification, diagnosis/assessment, and placement are examined. (CL)

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# AN OVERVIEW OF THE REQUIREMENTS OF SPECIAL EDUCATION (SB 1870) AND BILINGUAL EDUCATION (AB 507)

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## Introduction

Children with educational limitations require mandated services if their needs are to be met uniformly throughout the state. The legislative process at the federal level led to more refined and detailed procedures at the state level for both special education and bilingual education. The needs of the students in either of these programs are different, which necessitates different assessment, placement, and service components in each law. In common is the need for equal education opportunity for all students. Still missing is legislation that meets the unique needs of bilingual exceptional children; a vastly underserved population in California.

## I. What are the major requirements for special education established in both state and federal laws and regulations?

The California State Legislature passed several legislative bills which altered Education Code, Part 30, which deals specifically with special education. General provisions of state law clarify that all individuals with exceptional needs must be provided appropriate programs and services which are designed to meet their unique needs. The following briefly summarizes the major provisions of state and federal law which apply to special education:

EC161190

1. A free appropriate public education (FAPE) must be provided to each eligible handicapped individual at no cost to parents.

2. An ongoing research effort must be maintained by the local education agencies to insure that all potentially eligible handicapped individuals are identified, located, and evaluated.

3. In order to facilitate the evaluation (assessment) of each potentially eligible individual, each approved Special Education Local Plan must contain written referral procedures and these should be made readily available in each LEA.

4. Upon referral for assessment, the responsible LEA must, within 15 calendar days, develop and submit to the parents a written assessment plan for their written consent. A multidisciplinary team should be involved in most assessment and no single criterion may be utilized as the basis for determination of eligibility.

5. Within a maximum of 50 calendar days from receipt of the parents' written consent to the assessment plan, the LEA must complete the agreed-upon time and place to determine the child's eligibility and to develop an individualized education program (IEP). The required components of the IEP are specified in both state and federal law. Linguistically appropriate goals and objectives must be included in the IEP for individuals whose primary language is other than English.

6. Placement of the child, a component of the IEP, must be in the least restrictive environment (LRE) to the "maximum extent appropriate." Operationally defined, LRE is the "regular educational environment."

7. Ongoing of the handicapped student's progress and a formal IEP review, at least annually, (or more often if parent or teacher requests) is mandated.

8. In California, psychological and health "evaluation" (assessment) is mandated "as early as possible in the second year" for all students placed in Resource Specialist Programs "for more than one year" who have failed to show expected progress, and an IEP team meeting to consider the results and to make recommendations for the pupil is presumed.

9. A full-scale formal reassessment must be conducted at three-year intervals for each student who remains in special education that long or longer (or "more frequently if conditions warrant, or if the child's parent or teacher requests").

10. The programmatic and funding models for delivery of special education and related services as required by state law are to be found in the California Education Code, Part 30. The local school district or county office has available, upon request, a desk copy of their Special Education Local Plan Area document, as approved by the Office of Special Education, State Department of Education.

II. What are the major requirements of AB 507?

AB 507, authored by Assemblyman Peter Chacon, modified previous bilingual legislation (AB 1329, Chacon) in several key areas. These modifications have been viewed by both proponents and opponents of bilingual education as a compromise that offers greater flexibility and clarity to previous requirements for bilingual education. The major areas of the legislation (contained in the Ed. Code Section 52160 et seq.) include provisions for:

1. Student identification, including measurement of the student's oral and written proficiency in English.
2. Diagnostic assessment, including measurement of the student's proficiency in the primary language.
3. Reclassification criteria and procedures for Limited English Proficient (LEP) pupils.
4. Placement in appropriate bilingual program (options a, b, c, d) or Individual Learning Program (e, f).
5. Annual academic achievement testing, and English and/or the primary language testing.
6. Reporting the number of LEP pupils on the annual census.
7. Establishment of a Bilingual District Advisory Committee, and Bilingual School Advisory Committee.
8. Staffing bilingual programs (a,b,c) with a credentialed bilingual crosscultural teacher* when there are 10 or more LEP students of the same primary language, and the same age or grade for program activities a,b, or c (K-6).
9. Parent notification of eligibility to participate in bilingual programs.

For additional details on these sections and other provisions, refer to AB 507 the Bilingual Education Improvement and Reform Act of 1980: Requirements for Implementation; California State Department of Education, 1981.

*A bilingual cross-cultural teacher holds a bilingual cross-cultural certificate of proficiency or other credential in bilingual education or has a waiver approved by the State Department of Education.

III. What sections of special education and bilingual education are similar? What are some recommendations for facilitating the implementation of these sections?

Concept of Equal Education Opportunity

Both bilingual and special education requirements are based on the notion that instructional services need to consider individual student needs, irrespective of race, color, national origin, or handicap. In essence, an equal educational opportunity is ensured when student differences are carefully incorporated into the planning and delivery of educational programs. Federal legislation clearly prohibits discrimination and denial of access to services based on race, color, national origin, and handicap.

This means that bilingual programs and special education programs need to ensure that differentiated instructional services are provided that take into account the student's unique characteristics. Bilingual programs should provide differentiated English language instruction (e.g., ESL) and use of the child's primary language to support and sustain academic achievement.

In special education programs, student differences are recognized particularly through the assessment and instructional phases. Student eligibility for special education must be based upon a multidisciplinary assessment designed to rule out environmental and cultural factors as the sole criteria for determining eligibility. Each eligible student must receive an Individualized Education Program (IEP) based on the student's needs due to a handicapping condition(s). When necessary, the IEP must also include linguistically appropriate instructional services.

In facilitating the adherence to the concept of equality, local bilingual programs (i.e., Lau Plans) and local plans for special education should contain provisions that clarify the purpose, services, and process for articulation among programs. This might include details on how nondiscriminatory

practices will be ensured in the assessment, placement, and delivery of education services to eligible students. The following briefly summarizes how bilingual education and special education are related.

Student Identification

Special education law includes procedures for identifying students ranging from birth to age 21. Local plans for special education should contain details on how students within this range will be served. In contrast, bilingual education requirements are limited to grades K-12. Both special education and bilingual requirements are not tied to funding, which means that eligible students are to receive appropriate services whether or not the local educational agency receives categorical funds.

Diagnosis/Assessment

While these terms are often used synonymously, there are critical distinctions with respect to bilingual and special education programs. Diagnosis, as used in bilingual programs, refers to the conducting of additional assessment(s) in the child's primary language and English for the purpose of comparing student's proficiency in both English and the primary language. This comparison of proficiencies provides information for determining the language to be used for instructional purposes. Diagnosis does not affect student eligibility for bilingual services. Diagnosis also means that a student's language proficiency may also vary one skill area to another.

Assessment, as defined in special education law, includes a multicriteria based procedure wherein testing in a variety of areas (i.e., psychosocial, motor, intellectual, communicative status, etc.) enables the assessment team to determine student eligibility.

The assessment results form the foundation for the Individualized Education Program (IEP). The individual student assessment in this sense is similar to the diagnosis performed under AB 507, yet the purpose is different. In special education, the results of the assessment are used to determine eligibility of the child's IEP. In bilingual education, the diagnostic assessment is used to determine the strengths/weaknesses in the child's first and second language so that the language of instruction can be designated.

LEP students referred for special education assessment may have bilingual diagnostic information on file that should be included during the IEP process. The sharing of assessment data enhances the likelihood that linguistically and culturally appropriate goals will be developed and implemented based on student needs. This further ensures that LEP students are not prematurely or inaccurately labeled as handicapped solely on the basis of their limited English proficiency.

Placement

LEP students may be placed in a regular bilingual classroom (options a, b, c, d) or in an individual learning program (e, f) prior to referral for special education. Placement in a bilingual program, whether or not the student is eligible for assistance from other programs, is made subsequent to the language identification process (LEP, FEP) and should include at minimum:

1. English language development.
2. Utilization of the student's primary language for sustaining achievement.
3. Participation in activities which promote positive self-concept and crosscultural understanding.

The delivery of instructional services should be done by a bilingual cross-cultural teacher when there are ten or more LEP students of the same primary

language at a grade or age level in grades K-6. When there are fewer than ten students in grades K-6 and for all students in grades 7-12, an Individualized Learning Program (ILP) designed to individualize bilingual services must be provided at a minimum. When a LEP student additionally qualifies for special education services, a wider range of placement options becomes available. For example, a LEP student with exceptional needs may participate in designated instructional services (DIS), a resource specialist program, special day class or center, non public school or one of the state schools. Selection of the appropriate option for these handicapped LEP students should include among other considerations, the following:

1. The extent to which LEP students can benefit from instructional services with nonhandicapped LEP students, i.e., resource specialist program.

2. The extent to which linguistically appropriate goals and objectives based on diagnostic information in both the primary and second language are incorporated into the IEP.

During the development of the IEP, the assessment team needs to ensure that such a plan incorporates the appropriately modified ILP requirements. Incorporation of the ILP into the IEP is recommended for LEP students eligible for special education. Modification of the ILP requirements should consider at least the student's handicapping condition, language proficiency, and learning potential. For additional information on how to integrate the ILP and the IEP, see Appendix D on "Parallel of State Requirements on Bilingual Education and Special Education."